

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



OCTOBER 30, 2002

ALL-COUNTY LETTER NO. 02-86

TO: ALL COUNTY WELFARE DIRECTORS
ALL IHSS PROGRAM MANAGERS

REASON FOR THIS TRANSMITTAL

- State Law Change
 Federal Law or Regulation Change
 Court Order or Settlement Agreement
 Clarification Requested by One or More Counties
 Initiated by CDSS

SUBJECT: IN-HOME SUPPORTIVE SERVICES (IHSS) – IMPLEMENTATION OF ASSEMBLY BILL (AB) 2235, (CHAPTER 1135, STATUTES OF 2002)

REFERENCES: AB 1682, (CHAPTER 90, STATUTES OF 1999), DIVISION 4, TITLE 1, (COMMENCING WITH § 3500) OF THE GOVERNMENT CODE, ALL-COUNTY INFORMATION NOTICE (ACIN) I-27-02, ACIN I-42-02, ACIN I-43-02, ALL-COUNTY LETTER (ACL) 98-20, ACL 99-62, ACL 00-36, ACL 00-68

INTRODUCTION

The purpose of this ACL is to inform counties about the requirements of AB 2235, (Chapter 1135, Statutes of 2002).

BACKGROUND

AB 1682 (Chapter 90, Statutes of 1999) created a requirement that by January 1, 2003 each county act as, or establish, an employer for IHSS providers for the purposes of collective bargaining.

AB 1682 established a January 1, 2003 deadline by which each county is required to comply with the bill's provisions. AB 2235 defines in statute county compliance with AB 1682.

AB 2235

AB 2235 provides that any county that is not in compliance with AB 1682 by January 1, 2003, will by operation of law become the employer of IHSS individual providers for purposes of AB 1682, unless the county has fulfilled specific requirements. These requirements are discussed below.

In addition, AB 2235 provides that the State Controllers Office (SCO) make specific union related deductions from the providers' warrants. These statutory changes are reflected in

Welfare and Institutions Code (WIC) Sections 12301.6 and 12302.2. The California Department of Social Services (CDSS) will not issue instructions about the deduction process, but instructions may be issued through the SCO.

DEMONSTRATING COUNTY COMPLIANCE WITH AB 1682

In order to demonstrate AB 1682 compliance, AB 2235 requires counties to submit specified documentation to CDSS by January 15, 2003. The documentation that must be submitted by a county to demonstrate compliance with AB 1682 depends on the method(s) selected by the county to comply with AB 1682. Under AB 2235 the required documentation is as follows:

AB 1682 Compliance Method AB 2235 Documentation Requirement

PUBLIC AUTHORITY The county board of supervisor's public authority ordinance and the employer-employee relations policies.

IHSS CONTRACTING The invitations to bid and requests for proposal for contract services for the contract mode.

NONPROFIT CONSORTIUM An invitation to bid and request for proposal for the operation of a nonprofit consortium.

HOMEMAKER MODE A county board of supervisors' resolution resolving that the county has chosen to act as the employer by utilizing county employees to provide in-home supportive services, as authorized by Welfare and Institutions Code, Section 12302.

COUNTY SERVES AS THE AB 1682 EMPLOYER A county board of supervisors' resolution resolving that the county has chosen to act as the employer through county administration of individual providers.

MIXED MODES Any combination of the documentation required above that reflects the decision of a county to use more than one of the allowed methods to fulfill the requirements of AB 1682.

REQUIREMENT FOR AN EMPLOYER-EMPLOYEE RELATIONS POLICY

All-County Information Notice I-27-02 (April 4, 2002) advised counties that for compliance with AB 1682 a public authority must:

- 1) Be established by local ordinance,
- 2) Have the necessary agreement with county fully executed, and

- 3) Be staffed and operational to the extent that it can carry out the employer's responsibilities under the employer-employee relations statutes cited in AB 1682.

Under AB 2235, the documentation required from a county that establishes a Public Authority to comply with AB 1682 must include a copy of an " employer/employee relations policy."

All-County Letter 98-20 (March 17, 1998) provided counties with an example of an employer-employee relations policy for use by public authorities. The Department neither requires nor endorses this specific policy. The threshold for proof of interest by workers in an employee organization shown in this document is for example only. Many PAs have agreed to a lower threshold than the one provided with this All-County Letter.

For counties that choose to create a PA, such counties should contact the Public Employment Relations Board (PERB) for any questions regarding employee relations procedures or policies, including the use or adaptation of the example provided in ACL 98-20. The PERB is a quasi-judicial agency that oversees public sector collective bargaining in California. The Meyers-Milias-Brown Act of 1968 in Chapter 10 (commencing with Section 3500) Division 4 Title 1 of the Government Code establishing collective bargaining for California's municipal, county, and local special district employers and employees was brought under PERB's jurisdiction pursuant to Senate Bill 739 (Chapter 901, Statutes of 2000), effective July 1, 2001.

REQUIREMENTS IN LIEU OF DEMONSTRATING COMPLIANCE BY JANUARY 15, 2003

AB 2235 provides that a county that cannot submit the required documentation of AB 1682 compliance by January 15, 2003, must by that date alternatively provide CDSS with written notice describing the reasons for the county's inability to comply with AB 1682 and detailing a compliance plan and timetable. If a county provides such notice to CDSS, the deadline for compliance for that county is deferred to March 31, 2003. If, for any reason, a county that has provided such written notice is not in compliance by March 31, 2003, that county will, by operation of law, become the employer for purposes of AB 1682, effective April 1, 2003.

IMPACT ON AB 1682 PROCESS

AB 2235 does not modify, limit or alter the right, responsibility, or duty of each county to consider the ongoing advice and recommendations of its IHSS advisory committee on the modes and methods of IHSS service delivery for that county. Further, each county is still fully empowered to change from one IHSS service delivery method to another, and to change methods of service delivery within the existing modes, for purposes of compliance with AB 1682. For example, a county may decide, after IHSS advisory committee input, and after reviewing its actual experience, to change from one mode or method to another, or to add or eliminate existing modes or methods of IHSS service delivery.

Although any county is entitled to change modes or methods of IHSS service delivery, it must still maintain compliance with AB 2235 by providing CDSS with the appropriate documentation of its compliance whenever a change is made.

Pursuant to the original AB 1682 statutory language found at WIC 12302.25, CDSS issued ACL 99-62 providing the counties with a timeline for compliance with AB 1682, and a compliance certification requirement as of January 1, 2003. AB 2235 has imposed a statutory reporting deadline of January 15, 2003 which supersedes the January 1, 2003 deadline found in ACL 99-62. It also gives detailed instructions on how the counties are to document compliance with AB 1682. By this ACL, CDSS recognizes that the certification requirement of January 1, 2003 is superseded and satisfied by the reporting and documentation requirement of AB 2235.

If you have questions or concerns, please contact Alan Stelmack, Chief, Adult Programs Branch, at (916) 229-4583.

Sincerely,

*Original Signed by
Donna L. Mandelstam*

DONNA L. MANDELSTAM
Deputy Director
Disability and Adult Programs Division

Attachment

**ATTACHMENT A
TO ACL ON AB 2235 IMPLEMENTATION**

County Name _____
County Contact _____

Date _____
Tel. No. _____

The purpose of this table is to give each county a check-off form to ensure the necessary materials are being forwarded to the State to demonstrate compliance with AB 1682 and AB 2235 as found in Welfare and Institutions Code §12302.25.

Instructions: Check each box in Table 1 that applies to the method or mode of IHSS service delivery chosen by your county. Additionally, check any boxes in Table 2 that apply to your county and list the names of all the counties participating with you. Attach additional pages as needed. Submit this form and attach the required documentation as listed for each mode and method of service delivery checked. Please submit by January 15, 2003 and resubmit each time that the county changes modes or methods of service delivery. All submissions should be made to Bureau Chief, Program Operations Bureau, Adult Programs Branch, Disability and Adult Programs Division, California Department of Social Services, 744 P Street, MS. 19-96, Sacramento, California 95814.

TABLE 1

Mode and Method of Service Delivery	County Administration of Individual Provider Mode	Public Authority	Non-Profit Consortium	Contract Mode	Homemaker Mode
Check Each Mode or Method Used by the County		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Required Documents for Each Mode or Method	County Board of Supervisors Resolution	County Board of Supervisors Public Authority Ordinance Employer/Employee Relations Policy	Invitation to Bid Request for Proposal	Invitation to Bid Request for Proposal	County Board of Supervisors Resolution

TABLE 2

REGIONAL AGREEMENT USED?	Public Authority	Non-Profit Consortium	Contract Mode
Check Each Mode or Method Used by the County Through Regional Agreement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Identify All Counties Participating in Regional Agreement			

